



To the Honorable Council
City of Norfolk, Virginia

August 29, 2023

From: Kyle Spencer
Chief Resilience Officer

Subject: Acquisition of 538 Front Street

Reviewed:

A handwritten signature in black ink, appearing to read "Doug J. Beaver".

Douglas Beaver, Acting Deputy
City Manager

Ward/Superward: 2/6

Approved:

A handwritten signature in blue ink, appearing to read "Pat Roberts".

Patrick Roberts, City Manager

Item Number: R-01

I. **Recommendation:** Adopt Ordinance/Resolution

II. **Applicant:** City of Norfolk

III. **Description:**

This Agenda item is an ordinance to authorize the City Manager to purchase the NOAA property located at 538 Front Street as required by the National Defense Authorization Act of 2023.

IV. **Analysis:**

The federal General Services Administration (GSA) is facilitating the sale of the NOAA property and warehouse site located at 538 Front Street. City staff met with GSA in June and were presented with the sale price and timeline to complete the purchase of the property. The proposed purchase price is \$4.5 million, which is significantly higher than City projections. This strategic 3.78 acre parcel if acquired would support the Army Corp of Engineers floodwall alignment and possibly serve as a future location for a fire station with water rescue operations capabilities.

V. **Financial Impact**

Project cost	\$4,500,000
Estimated Closing Cost	\$75,000

VI. Environmental

An environmental assessment phase 1 has been conducted. There were no recognized environmental conditions.

VII. Community Outreach/Notification

The purchase of this property is required by the National Defense Authorization Act of 2023 (NDAA).

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the City Attorney's office.

Supporting Material from the Office of Resilience:

- Copy of NDAA language

Supporting Material:

- EXHIBIT A (ORD)-NOAA Norfolk Offer to Purchase 6-28-2023 (PDF)
- NDAA 2023 (DOCX)

Form and Correctness Approved:

BAP

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose

By: 

Office of the City Attorney

Contents Approved:



By: _____

Resilience



Michael Roggow, Director of Finance

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE APPROVING AN OFFER TO PURCHASE REAL ESTATE AND ACCEPTANCE BY AND BETWEEN THE UNITED STATES OF AMERICA, AS SELLER, AND THE CITY OF NORFOLK, AS PURCHASER, FOR THAT CERTAIN PARCEL OF REAL PROPERTY LOCATED AT 538 FRONT STREET IN THE CITY OF NORFOLK, VIRGINIA; AUTHORIZING THE CITY MANAGER TO ACCEPT A SPECIAL WARRANTY DEED ON BEHALF OF THE CITY OF NORFOLK; AND AUTHORIZING THE EXPENDITURE OF A SUM OF UP TO \$4,575,000.00 FROM FUNDS HERETOFORE APPROPRIATED FOR ACQUISITION OF THE PROPERTY AND ALL RELATED TRANSACTIONAL COSTS.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Offer to Purchase Real Estate and Acceptance by and between the United States of America, as Seller, and the City of Norfolk, as Purchaser, a copy of which is attached hereto as Exhibit A, wherein Seller agrees to transfer to the City that certain parcel of real property located at 538 Front Street in the City of Norfolk, Virginia (the "Property"), is hereby approved.

Section 2:- That the City Manager, with the advice and counsel of the City Attorney, is further authorized to correct, amend, or revise the Offer to Purchase Real Estate and Acceptance as may be necessary to carry out the intent of the Council as expressed in this ordinance.

Section 3:- That the City Manager and other proper officers of the City are hereby authorized to perform all necessary due

diligence and, if satisfactory, to accept a Special Warranty Deed from Seller, approved as to form and correctness by the City Attorney, and to do all other things necessary and proper to effect the conveyance of the Property to the City.

Section 4:- That the sum of up to \$4,575,000.00 from funds previously appropriated are hereby authorized for expenditure for the purchase of the Property and all related transactional costs.

Section 5:- That this ordinance shall be in effect from and after the date of its adoption.

EXHIBITS:

Exhibit A - Offer to Purchase Real Estate and Acceptance (36 pages)

CERTIFICATION OF FUNDING

Account No.: 4000-2-4361-5551-FY23 Amount: \$4,575,000.00

OFFER TO PURCHASE REAL ESTATE AND ACCEPTANCE

1. **Subject Property**

The City of Norfolk (“Purchaser” and “Offeror”), a municipal corporation in the Commonwealth of Virginia, hereby offers to purchase from the United States of America, acting by and through the Secretary of the Department of Commerce (“Seller” or “Government”), the surplus property formerly known as the National Geodetic Survey Field Operations Building located at 538 Front Street, Norfolk, Virginia GSA Control No. 4-C-VA1184AB, consisting of approximately 3.78 acres of land and 11,983± square feet of associated buildings/structures, on an “as is – where is” basis, all as more particularly described in the legal description attached hereto as **Exhibit A** and made part hereof (The “Property”). This *Offer to Purchase Real Estate and Acceptance* with Exhibits **A – G**, which are incorporated herein and made part of this agreement, shall be hereinafter referred to as the “Offer to Purchase.”

2. **Legal Authority**

Seller, pursuant to the National Defense Authorization Act for Fiscal Year 2023 (NDAA), Section 5945, attached hereto as **Exhibit B** and made part hereof, is directed to sell the property to the City of Norfolk at fair market value.

3. **Terms of Purchase and Sale**

3.1. Purchase Price. The total purchase price for the property is FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,500,000.00) payable as follows: FOUR HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$450,000.00) remitted as an

PURCHASER: _____
SELLER: _____

earnest money deposit (10% of purchase price) in the form of an electronic funds transfer (wire transfer) delivered with the Offer to Purchase signed by Purchaser; and FOUR MILLION FIFTY THOUSAND AND 00/100 DOLLARS (\$4,050,000.00) remitted upon closing pursuant to Subsection 3.4. Wire transfer instructions will be provided to the Purchaser by the Seller.

3.2. Title Documents.

Upon acceptance of the Offer to Purchase, conveyance of the Seller's interest shall be made by closing, pursuant to Section 3.4 herein, by quitclaim deed, providing the following:

- 3.2.1. The Property will be conveyed subject to all easements, covenants, conditions, and restrictions of record on the date of the Purchaser's execution of the Offer to Purchase.
- 3.2.2. Purchaser may inspect such abstracts of title or other title papers, maps, or plats as are in Seller's custody covering the property, but Seller will not be obligated to furnish any continuations, later title reports, or title insurance, or to pay any title expenses, escrow fees, or other charges pertaining to this transaction.
- 3.2.3. From the date of receipt by Seller of this Offer to Purchase, Seller shall not create, nor permit to be created, any lien, encumbrance, restriction or easement against the property

PURCHASER: _____
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of any type or kind, except as may be approved by the Purchaser.

3.3. Firm Offer and Seller's Acceptance.

This Offer to Purchase shall be firm and continuing for a period of thirty (30) days from the date of its receipt by Seller in accordance with Paragraph 5 of the General Terms Applicable to Negotiated Sales (**Exhibit C**). To accept this Offer to Purchase, Seller shall execute and return to Purchaser the original of this fully executed Offer to Purchase, which shall thereafter be known as the "Contract for Sale" of the Property. Purchaser's receipt of the executed Contract for Sale of the Property shall constitute notice to Purchaser that Seller has accepted Purchaser's Offer (hereinafter "Notice of Acceptance").

3.3.1. If this Offer to Purchase is withdrawn by Purchaser prior to expiration of the thirty (30) calendar day period, or such longer period as may be mutually agreed upon in writing by Purchaser and Seller, during which it remains a continuing offer, and prior to Seller's Notice of Acceptance, the earnest money deposited by Purchaser may, at Seller's option, be retained by Seller as liquidated damages, in which event Purchaser shall be relieved of any and all further liability to Seller.

3.3.2. If Seller does not accept this Offer to Purchase within thirty (30) calendar days of receipt by Seller, or such longer period

PURCHASER: _____
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as may be mutually agreed upon, then the earnest money deposit, as described in section 3.1 herein and Section 4 of Exhibit C, attached hereto and made part hereof, shall be promptly returned to Purchaser without interest and without further liability on the party of either party to the other..

3.4. Escrow and Closing.

Prior to closing, the Purchaser or Purchaser's agent must open an escrow account with an independent, unaffiliated escrow company ("Escrow Holder") to conduct the closing. All closing costs, including escrow fees and document handling expenses, shall be borne solely by the Purchaser. As part of the closing, the Seller will provide escrow instructions to the Escrow Holder regarding the recording, disposition of proceeds, and related matters.

The closing date of the sale will be not less than sixty (60) calendar days from Purchaser's receipt of Seller's Notice of Acceptance. The closing shall be coordinated with the Escrow Holder. At closing:

3.4.1. Seller shall deliver to Purchaser a quitclaim deed which shall have been duly executed and authenticated by an authorized official of Seller.

3.4.2. Notices

All Notices under this Offer to Purchase shall be sent to:

PURCHASER: _____
SELLER: _____

For Seller:

Mr. Jeremy Pelter
Acting Chief Financial Officer and Assistant Secretary of
Commerce for Administration
Herbert C. Hoover Federal Building
1401 Constitution Ave. NW
Washington, DC 20230

For Purchaser:

City Manager
City of Norfolk
810 Union Street, Suite 1101
Norfolk, Virginia 23510

With a Copy to:
City Attorney
City of Norfolk
810 Union Street, Suite 1101
Norfolk, Virginia 23510

4. **Conditions**

4.1. **General.**

The General Services Administration (“GSA”) General Terms Applicable to Negotiated Sales (**Exhibit C**) is attached hereto and incorporated into this Offer to Purchase. The terms and conditions set forth within this Offer to Purchase take precedence and control over similar or conflicting provisions of **Exhibit C**.

4.2. **Nondiscrimination.**

The nondiscrimination covenant (**Exhibit D**) shall be incorporated in the language of the Deed.

PURCHASER: _____
SELLER: _____

4.3. Excess Profits.

The Excess Profits Clause (**Exhibit E**) is part of this Offer to Purchase and shall be incorporated into the language of the Deed.

4.4. Inspection.

The Purchaser is invited, urged and cautioned to inspect the Property physically as to condition, description, quality, quantity, and exact location prior to submitting an offer. In no case will Purchaser's failure to inspect the Property constitute grounds for a claim against Seller or a justification of Purchaser's withdrawal of the Offer to Purchase.

4.5. Descriptions.

The Property description set forth in **Exhibit A** of this Offer to Purchase, including any other information provided therein with respect to the Property, are based on information available to the Seller and are believed to be correct, but any error or omission, including, but not limited to, the omission of any information available to the federal agency having custody over the Property (the Department of Commerce) and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the Contract for Sale of the Property, or claim by Purchaser for allowance, refund, or deduction from the purchase price.

5. **Restrictions, Easements, and Covenants**

5.1. General. The Property will be sold subject to any and all existing conditions, restrictions, easements, covenants, and matters (recorded

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and unrecorded), including but not limited to: rights-of-way for public roads, highways, streets, railroads, electrical transmission lines, waterlines, pipelines, public utilities, and to encroachments, rights of ingress and egress, rights of any parties in possession, any unfiled mechanic's and materialmen's liens, and any matters that a detailed survey and inspection of the property would disclose.

6. **Environmental**

6.1. Hazardous Substance. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Covenant (**Exhibit F**) is incorporated into this Offer to Purchase and shall be incorporated into the language of the deed.

6.2. Flood Plain Disclosure. The property lies in the 100-year flood plain. The flood map for the selected area is number 5101040056H, effective on 02/17/2017. The Purchaser agrees to comply with all Federal, State, and local regulations pertaining to land use and development of properties subject to flooding. The Purchaser and all successors shall save the Seller harmless in the event of damage to or loss of life or property resulting directly or indirectly from flooding.

6.3. Pesticides. The Purchaser is notified that the Property may contain the presence of pesticides that have been applied in the management of the Property. The United States of America knows of no use of any registered pesticide in a manner inconsistent with its labeling, and believes that all applications were made in accordance with the Federal

Insecticide, Fungicide and Rodenticide Act (FIFRA - 7 U.S.C. § 136, et seq.), its implementing regulations, and according to the labeling provided with such substances. Furthermore, that in accordance with the CERCLA, (42 U.S.C. § 9601, at seq.), the use of such substances is not a “release” (as defined in CERCLA, 42 U.S.C. § 9601 (22)), but instead the use of a consumer product in consumer use (42 U.S.C. § 9601 (9)), and the application of a pesticide product registered under FIFRA for which recovery for response costs is not allowed (42 U.S.C. § 9607 (i)).

6.4. Document Box. At such time as the building (if any) is demolished and any document box is found, which should be located behind the cornerstone, it shall remain the property of the Government and shall be delivered, unopened, to the National Archives and Records Service, Washington, D. C.

7. **Non-Merger**

The representations, covenants, and warranties contained in this Offer to Purchase shall survive the execution and delivery of the deed and will not be merged therein.

8. **Prohibition on Use of Certain Telecommunication and Video Surveillance Equipment**

By signature of the Offer To Purchase, the Purchaser(s) hereby certifies that their entity is in compliance with Section 889, Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment of the Fiscal

PURCHASER: _____
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Year 2019 National Defense Authorization Act (Pub. L. 115- 232). The Purchaser represents that it does not use covered telecommunications equipment or services, or use any equipment, system or service that uses covered telecommunications equipment or services. The statute prohibits contracting with an entity that uses certain telecommunications equipment or services produced by the below entities, companies, affiliates, or subsidiaries:

- a. Huawei Technologies Company
- b. ZTE Corporation
- c. Hytera Communications Corporation
- d. Hangzhou Hikvision Digital Technology Company
- e. Dahua Technology Company
- f. Kaspersky Lab

The prohibition of use of these telecommunications equipment or services applies regardless of whether or not that usage is related to the terms and conditions of this Offer to Purchase and the certification extends until closing of the transaction as specified herein.

9. **Excluded Parties**

The Purchaser is hereby on notice that GSA determines the Purchaser's eligibility for participation in the sale described herein upon submission of the Offer To Purchase and at prospective award. GSA validates the Purchaser's eligibility for participation via the System for Award Management (SAM) Exclusions Extract (available at www.sam.gov; SAM Home; Data Access; Exclusion Interfaces) and Purchaser may be required to provide its Tax Identification Number.

PURCHASER: _____
SELLER: _____

10. **Signing Authority**

Purchaser represents, and warrants that it has the legal authority to execute this Offer to Purchase on behalf of himself or his respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of that party with funding approval in the amount of the purchase price. Seller is fully entitled to rely on this warranty and representation in accepting Purchaser's offer resulting in the contract for sale of the Property.

Purchaser _____
Legal name if City, County, State, Commission, Individual Date

By: _____
To be signed by Official to conduct all negotiations with GSA by governing body resolution.

WITNESS:

Clerk:

Approved for Form and Correctness:

Deputy City Attorney

PURCHASER: _____
SELLER: _____

CERTIFICATE OF AUTHORIZATION OF PURCHASER

I, _____, certify that I am the _____ of the City of Norfolk a municipal corporation of the Commonwealth of, Virginia named as Purchaser herein; that Patrick G. Roberts, who signed this Offer to Purchase on behalf of the Purchaser was then [Interim] City Manager, that said Offer to Purchase was duly signed for and on behalf of said _____ by authority of its governing body, and the purchase is within the scope of its corporate powers.

Signature of Certifying Officer

SEAL

Acceptance of the United States Government.

The City of Norfolk's Offer to Purchase, as set forth in the foregoing Offer to Purchase is hereby ACCEPTED by and on behalf of the United States of America this _____ day of _____, 2023.

UNITED STATES OF AMERICA
Acting by and through the
Secretary of the Department of Commerce

BY: _____
Jeremy Pelter, Acting Chief Financial Officer &
Assistant Secretary of Commerce for Administration

PURCHASER: _____
SELLER: _____

Attachments

- (1) Exhibit A – Legal Description
- (2) Exhibit B – Legal Authority - NDAA FY23, Section 5945
- (3) Exhibit C – General Terms Applicable to Negotiated Sales
- (4) Exhibit D – Non-Discrimination Covenant
- (5) Exhibit E – Excess Profits Clause
- (6) Exhibit F – CERCLA Covenant
- (7) Exhibit G – Legal Description of Easement

PURCHASER: _____
SELLER: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain parcel of land designated as Parcel 28 on the plat entitled "Preliminary Subdivision of Property of Norfolk Redevelopment and Housing Authority," dated August 27, 1963, made by Baldwin and Gregg, Civil Engineers and Surveyors, and recorded in the Clerk's Office of the Corporation Court of the City of Norfolk in Map Book 24, Page 100, the said property being more particularly bounded and described with reference to the said plat as follows:

Beginning at a point in the northern line of Front Street, at its intersection with the western line of the waters of Smith Creek (known as the Hague) and running thence N 67° 22' 15" W a distance of 96.97 feet to a point; thence N 66° 52' 11" W a distance of 706.87 feet to a point; thence along the arc of a curve to the right, the radius of which is 15 feet, an arc distance of 23.39 feet to the eastern line of Second Street; thence N 22° 27' 39" E a distance of 225.85 feet to a point; thence along the arc of a curve to the right, the radius of which is 15 feet, an arc distance of 23.71 feet to a point in the southern line of Woodis Avenue; thence S 66° 53' 10" E a distance of 218.20 feet to a point; thence along the arc of a curve to the right, the radius of which is 190 feet, an arc distance of 80.87 feet to a point; thence along the arc of a curve to the left, the radius of which is 1,035.96 feet, an arc distance of 266.45 feet to a point; thence S 57° 14' 02" E a distance of 169.44 feet to a point in the western line of Smith Creek; thence S 67° 34' 12" W a distance of 2.18 feet to a point; thence S 19° 39' 26" E a distance of 59.07 feet to a point; thence S 20° 08' 57" E a distance of 41.42 feet to a point; thence S 06° 43'

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22" E a distance of 27.91 feet to a point; thence S 03° 48' 46" W a distance of 3.22 feet to a point and thence S 10° 25' 40" W a distance of 30.49 feet to the northern line of Front Street, the point of beginning.

Being a part of the same property conveyed to Norfolk Redevelopment and Housing Authority by the following described deeds recorded In the Clerk's Office of the Corporation Court of the City of Norfolk.

Deed of Emily Moore Johns, widow, dated December 29, 1959, recorded in Deed Book 822, page 475; Deed of Tidewater Construction Corporation, a Virginia Corporation, dated September 30, 1958, recorded In Deed Book 782, Page 781; Deed of John P. Aspinwall, Sr., et al, trading as Security Storage and Van Co. dated August 3, 1961, recorded in Deed Book 873, page 463.

PURCHASER: _____
SELLER: _____

EXHIBIT B

NDAA FY23, Section 5945

H. R. 7776—1078

(A) in subsection (d)—

(i) in the matter preceding paragraph (1), by striking “annually” and inserting “biennially”;

(ii) in paragraph (4), by striking “and” at the end;

(iii) in paragraph (5), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following:

“(6) an analysis of the indicators developed by the Task Force, and recommended by the Government Accountability Office, to track and measure inputs, outputs, law enforcement outcomes, and the market for wildlife products for each focus country listed in the report, including baseline measures, as appropriate, for each indicator in each focus country to determine the effectiveness and appropriateness of such indicators to assess progress and whether additional or separate indicators, or adjustments to indicators, may be necessary for focus countries.”; and

(B) in subsection (e), by striking “5 years after” and all that follows and inserting “on September 30, 2028”.

SEC. 5944. COST-SHARING REQUIREMENTS APPLICABLE TO CERTAIN BUREAU OF RECLAMATION DAMS AND DIKES.

Section 4309 of the America's Water Infrastructure Act of 2018 (43 U.S.C. 377b note; Public Law 115–270) is amended—

(1) in the section heading, by inserting “DAMS AND” before “DIKES”;

(2) in subsection (a), by striking “effective beginning on the date of enactment of this section, the Federal share of the operations and maintenance costs of a dike described in subsection (b)” and inserting “effective during the one-year period beginning on the date of the enactment of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, the Federal share of the dam safety modifications costs of a dam or dike described in subsection (b), including repairing or replacing a gate or ancillary gate components.”; and

(3) in subsection (b)—

(A) in the subsection heading, by inserting “DAMS AND” before “DIKES”;

(B) in the matter preceding paragraph (1), by inserting “dam or” before “dike” each place it appears; and

(C) in paragraph (2), by striking “December 31, 1945” and inserting “December 31, 1948”.

SEC. 5945. TRANSFER OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION PROPERTY IN NORFOLK, VIRGINIA.

Section 1 of Public Law 110–393 is amended to read as follows:

“SEC. 1. TRANSFER OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION PROPERTY IN NORFOLK, VIRGINIA.

“(a) IN GENERAL.—The Secretary shall convey all right, title, and interest of the United States in and to the Norfolk Property to the City, to be used by the City for the purposes of flood management and control, such that—

“(1) the property described in subsection (k)(3)(A) shall be conveyed to the City not later than 90 days after the date of the enactment of this section; and

“(2) the property described in subsection (k)(3)(B) shall be conveyed to the City not later than the earlier of—

“(A) the date on which the Secretary has transferred all of the employees of the Administration from the facilities at the Norfolk Property; or

“(B) 8 years after the date of the enactment of this section.

“(b) CONSIDERATION.—

“(1) IN GENERAL.—As consideration for the conveyance of the Norfolk Property, the City shall pay to the United States an amount equal to not less than the fair market value of the Norfolk Property, as determined by the Secretary, based on the appraisal described in subsection (g), which may consist of cash payment, in-kind consideration as described in paragraph (3), or a combination thereof.

“(2) SUFFICIENCY OF CONSIDERATION.—

“(A) IN GENERAL.—Consideration paid to the Secretary under paragraph (1) must be sufficient, as determined by the Secretary, to provide replacement space for and relocation of any personnel, furniture, fixtures, equipment, and personal property of any kind belonging to the Administration and located upon the Norfolk Property.

“(B) COMPLETION PRIOR TO CONVEYANCE.—Any cash consideration must be paid in full and any in-kind consideration must be complete, useable, and delivered to the satisfaction of the Secretary at or prior to the time of the conveyance of the Norfolk Property.

“(3) IN-KIND CONSIDERATION.—In-kind consideration paid by the City under paragraph (1) may include the acquisition, construction, provision, improvement, maintenance, repair, or restoration (including environmental restoration), or combination thereof, of any facilities or infrastructure with proximity to the Norfolk Property that the Secretary considers acceptable.

“(4) TREATMENT OF CASH CONSIDERATION RECEIVED.—Any cash consideration received by the United States under paragraph (1) shall be deposited in the special account in the Treasury under subparagraph (A) of section 572(b)(5) of title 40, United States Code, and shall be available in accordance with subparagraph (B)(ii) of such section.

“(c) COSTS OF CONVEYANCE.—All reasonable and necessary costs, including real estate transaction and environmental documentation costs, associated with the conveyance of the Norfolk Property to the City under this section may be shared equitably by the Secretary and the City, as determined by the Secretary, including by the City providing in-kind contributions for any or all of such costs.

“(d) PROCEEDS.—Any proceeds from a conveyance of the Norfolk Property under this section shall—

“(1) be credited as discretionary offsetting collections to the currently applicable appropriations accounts, or funds of the Administration; or

“(2) cover costs associated with the conveyance of the Norfolk Property and related relocation efforts, and shall be made available for such purposes only to the extent and in the amounts provided in advance in appropriations Acts.

“(e) SURVEY.—The exact acreage and legal description of the Norfolk Property shall be determined by a survey or surveys satisfactory to the Secretary.

“(f) CONDITION; QUITCLAIM DEED.—The Norfolk Property shall be conveyed—

“(1) in an ‘as is, where is’ condition; and

“(2) via a quitclaim deed.

“(g) FAIR MARKET VALUE.—

“(1) IN GENERAL.—The fair market value of the Norfolk Property shall be—

“(A) determined by an appraisal that—

“(i) is conducted by an independent appraiser selected by the Secretary; and

“(ii) meets the requirements of paragraph (2); and

“(B) adjusted, at the discretion of the Secretary, based on the factors described in paragraph (3).

“(2) APPRAISAL REQUIREMENTS.—An appraisal conducted under paragraph (1)(A) shall be conducted in accordance with nationally recognized appraisal standards, including the Uniform Standards of Professional Appraisal Practice.

“(3) FACTORS.—The factors described in this paragraph are—

“(A) matters of equity and fairness;

“(B) actions taken by the City regarding the Norfolk Property, including—

“(i) comprehensive waterfront planning, site development, and other redevelopment activities supported by the City in proximity to the Norfolk Property in furtherance of the flood management and control efforts of the City;

“(ii) in-kind contributions made to facilitate and support use of the Norfolk Property by governmental agencies; and

“(iii) maintenance expenses, capital improvements, or emergency expenditures necessary to ensure public safety and access to and from the Norfolk Property; and

“(C) such other factors as the Secretary determines appropriate.

“(h) COMPLIANCE WITH COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.—In carrying out this section, the Secretary shall comply with section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

“(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance of the Norfolk Property as the Secretary determines appropriate to protect the interests of the United States.

“(j) TERMINATION.—Notwithstanding any other provision of law, the Secretary, acting through the Under Secretary and Administrator of the Administration, is authorized to enter into a land lease with Mobile County, Alabama for a period of not less than 40 years, on such terms and conditions as the Administration deems appropriate, for purposes of construction of a Gulf of Mexico Disaster Response Center facility, provided that the lease is at no cost to the government. The Administration may enter into agreements with State, local, or county governments for purposes of joint use, operations, and occupancy of such facility.

“(k) DEFINITIONS.—In this section:

“(1) ADMINISTRATION.—The term ‘Administration’ means the National Oceanic and Atmospheric Administration.

“(2) CITY.—The term ‘City’ means the City of Norfolk, Virginia.

“(3) NORFOLK PROPERTY.—The term ‘Norfolk Property’ means—

“(A) the real property under the administrative jurisdiction of the Administration, including land and improvements thereon, located at 538 Front Street, Norfolk, Virginia, consisting of approximately 3.78 acres; and

“(B) the real property under the administrative jurisdiction of the Administration, including land and improvements thereon, located at 439 W. York Street, Norfolk, Virginia, consisting of approximately 2.5231 acres.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Commerce.”.

SEC. 5946. OTHER MATTERS.

(a) BRENNAN REEF.—

(1) DESIGNATION.—The reef described in paragraph (2) shall be known and designated as “Brennan Reef” in honor of the late Rear Admiral Richard T. Brennan of the National Oceanic and Atmospheric Administration.

(2) REEF DESCRIBED.—The reef referred to in paragraph (1) is—

(A) between the San Miguel and Santa Rosa Islands on the north side of the San Miguel Passage in the Channel Island National Marine Sanctuary; and

(B) centered at 34 degrees, 03.12 minutes North and 120 degrees, 15.95 minutes West.

(3) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the reef described in paragraph (2) shall be deemed to be a reference to Brennan Reef.

(b) PROHIBITION ON SALE OF SHARK FINS.—

(1) PROHIBITION.—Except as provided in paragraph (3), no person shall possess, acquire, receive, transport, offer for sale, sell, or purchase a shark fin or a product containing a shark fin.

(2) PENALTY.—A violation of paragraph (1) shall be treated as an act prohibited by section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) and shall be penalized pursuant to section 308 of that Act (16 U.S.C. 1858).

(3) EXCEPTIONS.—A person may possess a shark fin that was taken lawfully pursuant to a Federal, State, or territorial license or permit to take or land sharks if the shark fin was separated after the first point of landing in a manner consistent with the license or permit and is—

(A) destroyed or disposed of immediately upon separation from the carcass;

(B) used for noncommercial subsistence purposes in accordance with Federal, State, or territorial law; or

(C) used solely for display or research purposes by a museum, college, or university pursuant to a Federal, State, or territorial permit to conduct noncommercial scientific research.

EXHIBIT C

GENERAL TERMS APPLICABLE TO NEGOTIATED SALES

1. CONDITION OF PROPERTY.

The property is offered "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered.

2. DESCRIPTIONS IN OFFER TO PURCHASE.

The descriptions of the property set forth in the Offer to Purchase and any other information provided therein with respect to said property are based on information available to Seller and are believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other federal agency, shall not constitute ground or reason for nonperformance of the contract of sale, or claim by Purchaser for allowance, refund, or deduction from the purchase price.

3. INSPECTION.

Offerors are invited, urged, and cautioned to inspect the property to be sold prior to submitting an offer. The failure of any offeror to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute

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grounds for any claim or demand for adjustment or withdrawal of an offer after it has been tendered.

4. MONEY DEPOSIT.

The offer must be accompanied by an earnest money deposit in the amount required by this Offer to Purchase in the form of an electronic funds transfer (wire transfer), from Purchaser to Seller, or as otherwise provided for in this offer, made payable to the order of the General Services Administration. Failure to provide such earnest money deposit will result in Seller's rejection of the offer. Upon Seller's acceptance of the Purchaser's offer, the earnest money deposit shall be applied toward payment of the offeror's obligation to the Government. In the event the offer is rejected, the deposit will be returned, without interest, as promptly as possible after rejection of the offer.

5. CONTINUING OFFER.

The offer shall be deemed to be a firm and continuing offer from the date of receipt until accepted or rejected by the Government: provided, however, that after 30 days have elapsed from the date of receipt, the offeror not having received notice of rejection may consider his offer rejected, and if the Government desires to accept the offer after such 90-day period, the consent of the offeror thereto shall be obtained.

6. NOTICE OF ACCEPTANCE OR REJECTION.

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Notice by the Government of acceptance or rejection of the offer shall be deemed to have been sufficiently given when transmitted by facsimile, emailed or mailed to the offeror or his duly authorized representative as indicated in the offer.

7. CONTRACT.

These General Terms Applicable to Negotiated Sales, the offer, and the acceptance thereof, shall constitute an agreement between the offeror and the Government. Such agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract; nor shall the contract, or any interest therein, be transferred or assigned by the offeror without consent of the Government, and any assignment transaction without such consent shall be void.

8. REVOCATION OF OFFER AND DEFAULT.

In the event of revocation of the offer prior to acceptance, or in the event of any default by the offeror in the performance of the contract created by such acceptance, the deposit, together with any payments subsequently made on account may be forfeited at the option of the Government, in which event the offeror shall be relieved from further liability, or without forfeiting the said deposit and payments, the Government may avail itself of any legal or equitable rights which it may have under the offer or contract.

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9. GOVERNMENT LIABILITY.

If this Offer to Purchase is accepted by the Seller and: (1) Seller fails for any reason to perform its obligation as set forth herein; or (2) Title does not transfer or vest in the Purchaser for any reason although Purchaser is ready, willing, and able to close, Seller shall promptly refund to Purchaser all amounts of money Purchaser has paid without interest whereupon Seller shall have no further liability to Purchaser.

10. OTHER TERMS APPLICABLE TO A SALE.

a. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the offeror shall assume responsibility for care and handling and all risks of loss or damage to the property and have all obligations and liabilities of ownership.

b. Any title evidence which may be desired by the offeror will be procured by him at his sole cost and expense. The Government will, however, cooperate with the offeror or his authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and the property involved, as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters or survey of the property.

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c. Upon assumption of possession of the property, or conveyance of the property, whichever occurs first, the offeror shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the property, and sums paid, or due to be paid, by the Government in lieu of taxes pursuant to statutory authority shall be prorated.

d. In the event an offer to purchase for cash is accepted and possession of the property is assumed by the offeror prior to the date of conveyance, the offeror shall procure and maintain insurance at his expense, effective for the period from the date of assumption of possession to date of conveyance, for the benefit of the Government in such kinds and amounts as may be required by the Government, with companies acceptable to the Government.

e. If a bid for the purchase of the property is accepted, the Government's interest will be conveyed by a quitclaim deed or deed without warranty and/or, where appropriate, a bill of sale in conformity with local law and practice.

f. The offeror shall on a mutually agreeable date not later than 30 days after acceptance of the offer, or within such additional time as may be granted by the Government, tender to the Government the balance of the purchase price. The offeror shall be required to effectuate a wire transfer to the Department of the Treasury of the funds due at the sale closing. Instructions for the wire transfer will be furnished to the offeror prior to the sale closing. Upon such tender being made by the offeror, the Government shall deliver to the offeror the instrument, or instruments, of conveyance. In any event, if possession was assumed by the

offeror prior to the date of conveyance, the offeror shall pay, in addition to the purchase money due, an amount required under the provisions of the offer.

g. The offeror shall pay all taxes and fees imposed on this transaction and shall obtain at his own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the offeror's expense.

11. OFFICIALS NOT TO BENEFIT.

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of the contract of sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.

12. DELAYED CLOSING.

The successful offeror will pay interest on the outstanding balance of the purchase price if the closing of the sale is delayed, and the delay is caused, directly or indirectly, by the successful offeror's actions and not by fault of the Government. This rate to be computed is based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1 ½ percent rounded to the nearest

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one-eighth percent ($\frac{1}{8}\%$); as of the date of acceptance of the offer by the Government.

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EXHIBIT D

NON-DISCRIMINATION COVENANT

The Purchaser covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Purchaser and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, national origin, or sex in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms with a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have sole right to enforce this covenant in any court of competent jurisdiction.

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SELLER: _____

EXHIBIT E

EXCESS PROFITS CLAUSE

- (a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the "Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.
- (b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:
- (1) The purchase price of the real property;
 - (2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;

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- (3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b) (2) of this section; and
 - (4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.
- (c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.
- (d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:
 - (1) A description of each portion of the property that has been resold;
 - (2) The sale price of each such resold portion;
- (e) The identity of each purchaser;
- (f) The proposed land use; and
- (g) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

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If no resale has been made, the report shall so state.

- (h) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

EXHIBIT F

CERCLA COVENANT

a. Notice Regarding Hazardous Substance Activity. In accordance with 40 CFR 373.2 and Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. §9620(h)(3)(A)(i)), and based upon a complete search of agency files, the United States gives notice of the following:

1. Phase I Environmental Site Assessment (ESA) – In 2007, a Phase I Environmental Site Assessment (ESA) was performed by The Louis Berger Group, Inc. (herein referenced as Berger) under contract with NOAA for the land and facilities contained within the Property. The site inspection for the Phase I ESA was performed on June 15, 2007. The Phase I ESA was performed to evaluate present environmental conditions and to determine if there are any “Recognize Environmental Conditions (RECs)”.

The ESA found that a 1992 environmental audit of the property identified an oil spill at the concrete pad that lies north of the office building, near the north property boundary. The spill of several gallons of hydraulic oil originated from the reservoir of a hydraulic winch stored on the pad and affected an area at the northwest end of the pad. NOAA reported the spill to the Virginia Department of Environmental Quality (VADEQ) and undertook corrective actions that included soil sampling and analyses, and

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removal of approximately 30 tons of soil. In February 1993, VADEQ issued a closure letter.

Berger's communications with local government officials identified no RECs in connection with the Property. Berger's inspection of the land parcel and interviews with NOAA staff in June 2007, yielded no evidence of RECs, other than the 1992 spill incident. This spill incident constitutes a Historic REC, since VADEQ has indicated a satisfactory resolution of the case.

The Phase I ESA records review also indicated that leaking underground storage tanks (LUSTS) existed in the vicinity of the Property. None of the LUST sites individually appear to represent a REC with respect to the land parcel. In addition to the LUSTS, several spills of oil and hazardous materials have occurred in the immediate vicinity of the Property; however, individually these incidents do not constitute a REC with respect to the land parcel. Collectively, the history of industrial activities and recorded releases of oil and hazardous materials in the vicinity of and at the Property constitute a REC.

2. Phase II Environmental Site Assessment (ESA) – As a follow-up to the Phase I identified REC, on October 26, 2007, soil borings were advanced at four locations across the Property. The first soil boring was located in the western area of the site, the second at the location of the 1992 spill incident, the third near the light rail easement that runs along the northeast

side of the site (parallel to West Brambleton Avenue), and the fourth soil boring was located in the eastern area of the site. Each of the four soil borings were advanced to a depth 10 to 17 feet below ground surface to a layer of silt that was considered “native soil.” It was reported that nothing unusual was observed during the drilling operations. A NOAA records search did not locate any additional file information or reports of additional environmental assessments/investigations having been conducted on the Property.

3. Hazardous Building Materials – The NOS NGS Office Building does not contain any hazardous building materials (e.g., asbestos, lead-based paint, polychlorinated biphenyls (PCBs), mercury). In 1998, the entire building was completely renovated and transformed during a project in which the building was essentially “gutted” and reconstructed. Any of the hazardous building materials present prior to the project were removed during the renovation/reconstruction project.
4. Environmental Soil Removal Report 2009 – According to a Contaminated Soil Removal Report prepared by AGVIQ, dated April 17, 2009, there was a construction project along the north boundary of the Property to construct/expand the light rail system. The construction company, Skanska, encountered petroleum contaminated soil during excavation and construction of the footer wall for the new Light Rail Transit (LRT) Bridge. The site was located on the southwest side of Smith Creek on NOAA property. Six hundred and forty-six (646) tons of petroleum impacted fill

material along with an old abandoned in place underground storage tank (UST) were removed on March 9 and 11, 2009. The soils report indicates that a total of 646 tons of petroleum contaminated soil were transported to the SOILEX Corporation's treatment facility located in Chesapeake, VA, a facility which is permitted by the Virginia Department of Environmental Quality (VDEQ). The petroleum contaminated soil was excavated and immediately loaded into trucks for transport. Records of SOILEX Corporation receiving the petroleum contaminated soil is found in soil report's Attachment D - SOILEX Daily Manifest Log and Non-Hazardous Waste Manifests.

- b. CERCLA Covenant. Grantor warrants that all remedial action necessary to protect human health and the environment has been taken before the date of this conveyance. Grantor warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance.

1. This covenant shall not apply:

- a. in any case in which Grantee, its successor(s) or assign(s), or any successor in interest to the Property or part thereof is a Potentially Responsible Party (PRP) with respect to the Property immediately prior to the date of this conveyance; OR
- b. to the extent that such additional response action or part thereof found to be necessary is the result of an act or failure to act of the

Grantee, its successor(s) or assign(s), or any party in possession after the date of this conveyance that either:

- i. results in a release or threatened release of a hazardous substance that was not located on the Property on the date of this conveyance; OR
 - ii. causes or exacerbates the release or threatened release of a hazardous substance the existence and location of which was known and identified to the applicable regulatory authority as of the date of this conveyance; OR
 - iii. in the case of a hazardous substance(s) previously unknown by Grantor and Grantee as of the date of this conveyance but which is hereafter discovered by Grantee, its successor(s) or assign(s), or any party in possession and where after such discovery, Grantee, its successor(s) or assign(s), or any party in possession thereafter causes or exacerbates a release or threatened release of such hazardous substance(s).
2. In the event Grantee, its successor(s) or assign(s), seeks to have Grantor conduct any additional response action, and, as a condition precedent to Grantor incurring any additional cleanup obligation or related expenses, the Grantee, its successor(s) or assign(s), shall provide Grantor at least 45 days written notice of such a claim. In order for the 45-day period to commence, such notice must include credible evidence that:

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- a. the associated contamination existed prior to the date of this conveyance; and
- b. the need to conduct any additional response action or part thereof was not the result of any act or failure to act by the Grantee, its successor(s) or assign(s), or any party in possession.
- c. Access. Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action, or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States of America, and its respective officers, agents, employees, contractors, and subcontractors shall have the right (upon reasonable advance written notice to the record title owner) to enter upon the Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation and operation of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants.

EXHIBIT G

LEGAL DESCRIPTION OF EASEMENT

All that certain parcel of land designated as parcel 28 on the plat entitled "Preliminary Subdivision of Property of Norfolk Redevelopment and Housing Authority", dated August 27, 1963, made by Baldwin and Gregg, Civil Engineers and Surveyors, and recorded in the Clerk's Office of Corporation Court of the City of Norfolk in Map Book 24, page 100, the said property being more particularly bounded and described with reference to the said plat as follows:

The easement granted covers approximately 12,663.62 square feet of land on said plat from a beginning point that is 126.23 feet north of the point of intersection of the northern line of Front Street and the western line of the waters of Smith Creek (known as the Hague) and running thence N 57°12' 59" W a distance of 209.12 feet; thence along an arc of a curve to the right with a chord bearing of N 56°46' 15" W, the radius of 3,018.81 feet, and the arc 46.93 feet; thence along an arc of a curve to the right with a chord bearing of N 46° 27' 59" W, the radius of 766.83 feet, and the arc distance of 263.89 feet; running thence along an arc of a curve to the right with a chord bearing of N 35° 36'15" W, the radius of 895.05 feet, and the arc distance of 31.36 feet; running thence along an arc of a curve to the right with a chord bearing of S 22° 08' 48" W, the radius of 190.00 feet, and the arc distance of 88.88 feet to a point; running thence along an arc of a curve to the right with a starting chord bearing of S 49° 50' 21" E, the radius of 1,035.96 feet, and the arc distance of 266.45 feet; running thence S 57° 12' 26" E, a distance of 169.44 feet to a point in the western line of Smith Creek; running thence S 19° 37' 50" W, a distance of 35.87 to the point of beginning.

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